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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,967	09/27/2001	Bernard Tao	8660-0018	2526

7590 10/28/2003

Intellectual Property Group
Bose McKinney & Evans LLP
2700 First Indiana Plaza
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EXAMINER

TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/964,967	TAO ET AL.	
	Examiner	Art Unit	
	Cephia D. Toomer	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Specification

1. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsaras (US 3,844,706) in view of Murphy (US 6,503,285) and Poulina (US 4,813,975).

Tsaras teaches a candle composition comprising triglycerides such as, soybean and mixtures of the like, and an additive that may be a carboxylic acid of 5 to 37 carbon atoms. The triglyceride is present in the composition in an amount from 45 to 94 weight percent and the carboxylic acid is present in an amount from 0 to 40 weight percent (see abstract; column 1, lines 60-65; column 2, lines 1-5; column 2, lines 59-68; column 3, lines 1-21; column 6, lines 1-10; column 6, lines 49-57). The fatty acid components of the triglycerides encompass those of the present invention (see column 3, lines 35-65).

Tsaras teaches that the candle composition contains perfume oil (greater than 3%). The composition also may contain colorants, UV absorbers and antioxidants (see

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column 14, line 63 through column 15, lines 1-10; column 16, lines 4-20). Tsaras teaches the limitations of the claims other than the differences that are discussed below.

In the first aspect, Tsaras differs from the claims in that he does not specifically teach crystal modifiers. However, Murphy and Poulina teach these differences.

Murphy teaches that 3-30% of polyol fatty acid partial esters are added to triglyceride candle compositions to adjust the melting point and/or solid fat index of the composition such that the candle prepared from the composition is not too brittle (see abstract; column 7, lines 8-25). Poulina teaches that polyol fatty acid partial esters, such as those of Murphy, are crystal modifiers (see column 1, lines 43-68).

It would have been obvious to one of ordinary skill in the art to include crystal modifiers in the candle composition because these compounds enable the artisan to produce a candle that is not too brittle.

In the second aspect, Tsaras does not specifically teach that the carboxylic acid additive is stearic acid. However, it would have been obvious to one of ordinary skill in the art to prepare a candle composition containing stearic acid because Tsaras teaches that acids containing up to 35 carbon atoms may be employed in the composition.

In the third aspect, Tsaras fails to teach that the triglyceride may be a mixture of soybean oil and canola oil. However, no unobviousness is seen in this difference because Tsaras teaches that a mixture of triglycerides may be used and he does not limit the triglycerides to just the disclosed triglycerides.


The prior art made of record but not relied upon is cited for teaching solid oil-based candles and is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 703-308-2509. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Cephia D. Toomer
Primary Examiner
Art Unit 1714

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